Supreme Court, U.S.
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NO. 98-1560

In The
Supreme Court of the United States
October Term, 1998

BRIAN A. DROSTE,
Petitioner,

v.

STATE OF OHIO,
Respondent.

On Petition for Writ of Certiorari
To the Ohio Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S RESTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Where a government agent acts with a good faith belief that he is within his limited statutory jurisdiction when he makes an investigatory stop, is the detention unreasonable per se under the Fourth and Fourteenth Amendments to the United States Constitution when later found to be technically outside the scope of his statutory jurisdiction?

2. Can a citizen use reasonable force to resist an unlawful arrest?

3. Where a state legislature has enacted a statute purporting to limit the jurisdiction of a state agent and where the limiting terms are left undefined, must a detention subsequently determined to have been made outside of those jurisdictional limitations implicate a provision of the United States Constitution?

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STATEMENT OF JURISDICITON

Petitioner's question relating to the right of a citizen to "use all reasonable force, including deadly force, to resist any unlawful arrest" was not raised in any prior proceeding in this case. This Court should therefore decline to consider that question for lack of jurisdiction.

STATEMENT OF THE CASE

Around midnight on February 26, 1996, the Petitioner, Brian A. Droste, was operating his vehicle southbound on State Route 315 within the City of Columbus, Ohio. At a speed approaching 100 m.p.h., the Petitioner passed at least one vehicle – causing said vehicle to swerve to avoid being sideswiped – then changed lanes, without signaling, from the center lane to the left lane and abruptly applied his brakes to avoid colliding with other vehicles. The unmarked vehicle the Petitioner had passed contained two on-duty, plain-clothed, liquor control investigators: Agents Michael Betts and Philip Williams.

The liquor control investigators aired their observations on the Law Enforcement Emergency Radio Network ("LEERN") and requested that a marked cruiser respond. The Ohio State Highway Patrol responded to the call and asked the agents to report their location so that a cruiser could be dispatched. All the while, the Petitioner's vehicle continued southbound at the same speed, abruptly

changing lanes from the center to the right lane thereby cutting off the vehicle in the right lane. The Petitioner's vehicle then decelerated rapidly – allowing the agents to catch-up – and exited State Route 315 at Lane Avenue, coming to a stop at the traffic light at the end of the ramp. Upon marking the position of the Petitioner, the agents were advised by LEERN to stop the vehicle and that a marked cruiser was on the way – estimated time of arrival, unknown.

The agents approached the Petitioner's vehicle, identified themselves, and displayed their badges. The agents asked the four vehicle occupants to place their hands where the agents could see them – upon the agents' second request, the occupants complied. The Petitioner/driver was asked to state his name. The Petitioner gave his name and his age (Petitioner was under twenty-one years of age, the legal drinking age in Ohio) at which point Agent Betts detected a strong odor of an alcoholic beverage upon the Petitioner's person. The Petitioner was asked to exit his vehicle and he did so, using the vehicle for support. Agent Betts advised the Petitioner that Betts was with Liquor

Enforcement and read the Petitioner his Miranda rights. The Petitioner waived his right to remain silent and stated that he had consumed several glasses of gin.

Approximately five minutes after the stop, Officer Robert Lagore of the Columbus Division of Police arrived in uniform and in a marked cruiser. Officer Lagore had not been in contact with the agents prior to his arrival at the scene; all the information possessed by Officer Lagore at that time had been relayed to him by the State Highway Patrol dispatcher. Agents Betts and Williams advised Officer Lagore of their previous observations of the Petitioner's driving.

In response to Officer Lagore's inquiries, the Petitioner gave his name, his age and stated both that he had been driving the vehicle and drinking earlier in the evening. During the course of their conversation, Officer Lagore noticed an odor of an alcoholic beverage on or about the Petitioner's person. Officer Lagore requested that the Petitioner submit to field sobriety tests. Agent Williams asked if he could administer the tests for experience and Officer Lagore agreed. Under Officer Lagore's observation, Agent

Williams properly conducted the tests and the Petitioner failed.

Officer Lagore arrested the Petitioner for Operating a Motor Vehicle While Under the Influence ("OMVI") in violation of Ohio Revised Code section 4511.19(A)(1) and transported him to the downtown site for a breath test. The Petitioner agreed to submit and the results indicated a BAC level of .124 – over the legal limit in Ohio of .10 and well over the legal limit of .02 for those under the age of twenty-one. Officer Lagore charged the Petitioner with OMVI, Operating a Motor Vehicle with a Prohibited Concentration of Alcohol while Underage in violation of Ohio Revised Code section 4511.19(B)(2) ("OMVUAC"), and reckless operation under the Columbus City Code section 2133.02(A) (later amended to reflect a state code violation under Ohio Revised Code section 4511.20). Agent Betts charged the Petitioner with underage consumption (Ohio Revised Code section 4301.632).

The Petitioner entered a plea of not guilty as to all four charges and filed a combined Motion to

Dismiss and to Suppress. On May 8, 1996, a hearing was conducted on the Petitioner's motions. The trial court, in a written decision issued on June 25, 1996, found that the Petitioner was placed under arrest for the traffic offenses by Officer Lagore and not by the liquor agents. The trial court further held that the liquor agents conducted an investigatory stop only and that their interactions with the Petitioner did not arise to the level of an arrest.

In deciding the motion to suppress, the trial court first addressed the issue of the agents' authority to conduct an investigatory stop. The Petitioner had argued that the agents were acting outside of their statutory authority when they detained him; the State countered that the agents were acting within their statutory authority in that they were either assisting the Columbus Police Department or acting in an emergency situation or both in accordance with Ohio Revised Code section 5502.61(B)[1]. For the purposes of Petitioner's argument, the trial court assumed – but did not

[1] In 1998, Ohio Revised Code section 5502.61 was amended. The changes, as relate to the issues at hand, were of form rather than substance. Former Ohio Revised Code section 5502.61(B) is now codified at Ohio Revised Code section 5502.61(D). The Petitioner, in his appendix, includes a copy of the statute however, paragraphs (D)

hold – that: (1) the investigators do not have statutory authority to enforce traffic laws and (2) the conduct of the investigators was not within the assistance authorized by Ohio Revised Code section 5502.61(B). The trial court then went on to hold that even if these two assumptions were found to be true, the exclusionary rule would not apply to evidence that is the product of police misconduct violative of state law but not violative of constitutional law.

The trial court specifically found that the stop of the Petitioner was constitutional in that it was based upon a reasonable, articulable suspicion that the Petitioner may have been violating the traffic laws. Declining to apply the exclusionary rule to a violation of state law that did not arise to a constitutional violation, the trial judge overruled Petitioner's motion to suppress.

The trial court next addressed the Petitioner's motion to dismiss the traffic offenses. The court held that the State had proven that Officer Lagore had probable cause to arrest the Petitioner for the three offenses. Specifically, the trial court found that

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and (E) have been omitted. A complete copy has been attached in the appendix to this Brief in Opposition.

Officer Lagore could rely upon the information received from a reliable source, such as another peace officer, to establish probable cause. The information related to Office Lagore by the agents regarding their observations of Petitioner's driving, coupled with the odor of alcohol, and the Petitioner's failing performance on the field sobriety tests were held to be sufficient to establish probable cause. The Petitioner's motion to dismiss was overruled.

Pursuant to a plea bargain, the Petitioner entered a plea of "no contest" to the charge of OMVI and the remaining charges were dismissed. The trial court found him guilty and the Petitioner appealed to the Court of Appeals of Ohio, Tenth Appellate District.

In a misreading of the opinion of the trial court, the Court of Appeals stated that the trial judge found the agents to have been outside their statutory grant of jurisdictional authority[2]. The Tenth District then went

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[2] The Petitioner makes a similar misreading when he asserts that the Respondent conceded that the agents were not acting within the scope of their authority. (Petition, 20) While the State has assumed, *arguendo*, that the agents were beyond the limits of their authority, that was necessitated by the trial court having made that assumption in

on to hold that the exercise of police powers outside of that statutory authority was, per se, a violation of the Fourth Amendment. The Court of Appeals further found the trial court erred in failing to apply the exclusionary rule. Finally, the Tenth District held that since the facts the agents conveyed to Officer Lagore were obtained in violation of the Petitioner's Fourth Amendment rights, Officer Lagore could not rely upon the facts in establishing probable cause to arrest the Petitioner for OMVI. The judgement of the trial court was reversed and remanded on April 1, 1997.

Following a denial by the Tenth District to certify a conflict[3], the State of Ohio sought and was granted leave to file a discretionary appeal to the Ohio Supreme Court. In a decision rendered on August 19,

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deciding the case. Given the facts of the case and the language of the empowering statute, the State still maintains that the agents were rendering assistance and/or involved in an emergency situation in accordance with state law.

[3] The petition states that the State "framed the sole issues" in this matter in the State's Motion to Certify Conflict. (Petition, 16). This is an incorrect statement. While the issue quoted in the Petitioner's brief was the only one stated for purposes of an appeal based upon a conflict among the districts, the discretionary appeal that was granted did not limit the State to this one issue nor did the State limit itself. The reason for the sole issue in that Motion was simple – it was the issue that formed the basis for the conflict. It was not, however, the only issue in the case.

1998, the Ohio Supreme Court held, in its syllabus, that "absent a violation of a constitutional right, the violation of a statute does not invoke the exclusionary rule." (Petitioner's Appendix C, 1) The Court found that the liquor agents violated the statute granting them arrest authority when they detained the Petitioner. The Court went on to state, however, that the record demonstrated that no constitutional rights of the Petitioner were violated. Specifically, The Ohio Supreme Court found that the Petitioner stopped on his own accord and that Officer Lagore had probable cause to arrest him for OMVI.

The Ohio Supreme Court went on to state that the "mere providing to a police officer of information upon which that officer will base and continue a criminal investigation and eventually file a criminal complaint is not an exercise of the authority 'to keep the peace and to enforce and make arrests.'" (Petitioner's Appendix C, 15-16) Thus Officer Lagore could rely upon the liquor agents' observations of Petitioner's driving in establishing probable cause to arrest the Petitioner for OMVI. Where no

constitutional violation existed, the Ohio Supreme Court declined to invoke the exclusionary rule for a violation of a state statute.

This petition followed.

REASONS FOR DENYING THE WRIT

Before a proper response to the petition can be articulated, it is important to first ascertain which issues the Petitioner is seeking to have reviewed. Pursuant to the Ohio Supreme Court Rules for the Reporting of Opinions, the Ohio Supreme Court speaks through its syllabus. (Rule 1, Supreme Court Rules for the Reporting of Opinions) The holding in this case was simply stated: "Absent a violation of a constitutional right, the violation of a statute does not invoke the exclusionary rule." (Petitioner's Appendix C, 1)

The petitioner does not appear to be challenging the holding of the Ohio Supreme Court. In fact, the third question presented for review is not even inconsistent with that decision. By limiting the decision to those instances where a constitutional right has not been violated, the Ohio Supreme Court allows for the possibility that, given other circumstances, some violations of state law may implicate constitutional provisions. Rather, the Petitioner implies that the law was misapplied in this instance.

Furthermore, it is important to note that the Petitioner has not questioned the applicability of the exclusionary rule. The petition mentions suppression only twice: when quoting from the State's Motion to Certify Conflict (Petition, 16) and when quoting from a Florida District Court opinion (Petition, 17).[4] As this Court stated in *Illinois v. Gates*, 462 U.S. 213 (1983):

> The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct. -

Gates, 462 U.S. at 223 *citing United States v. Havens*, 446 U.S. 620 (1980); *United States v. Ceccolini*, 435 U.S. 268 (1976); *United States v. Calandra*, 414 U.S. 338 (1974); *Stone v. Powell*, 428 U.S. 465 (1976).

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[4] The Petitioner neglects to mention that the Florida District Court ultimately held that the arrest was lawful "so long as the probable cause justifying the arrests was lawfully obtained." *Florida v. Phoenix*, 428 So. 2d 262, 264 (1982).

Since the applicability of the exclusionary rule has not been raised, neither the scope of nor any exception to – such as the good faith exception – its application is presented for review.

With the aforementioned limitations in mind, the Respondent argues the following reasons for denying the petition for writ of certiorari.

I. Given the limited scope of the questions presented for review, the petition is calling for a merely advisory opinion.

When discussing this Court's jurisdiction to hear a federal question where an adequate and independent state ground for the ruling exists, the Court framed the issue as follows:

> The jurisdictional concern is that we not "render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

Michigan v. Long, 463 U.S. 1032, 1042 (1983) *quoting Herb v. Pitcairn*, 324 U.S. 117, 126 (1945). While the

Ohio Supreme Court did not base its decision on independent state grounds, the arguments against issuing advisory opinions would advocate a denial of the writ where the questions presented fail to seek review of the alternative federal grounds for upholding the state court ruling.

Specifically, the Petitioner urges this Court to find that a violation of a state statute limiting the jurisdictional authority of a state actor is unreasonable per se and, thus, in contravention of the Fourth and Fourteenth Amendments. However, the Petitioner does not present for review the issue of the applicability of the exclusionary rule should this Court find in their favor. The exclusionary rule is "prudential rather than constitutionally mandated" and is applicable "only where its deterrence benefits outweigh its 'substantial social costs.'" *Pennsylvania Bd. Of Probation and Parole v. Scott,* 524 U.S. 357, ___ (1998) *quoting United States v. Leon,* 468 U.S. 897, 907 (1984). On remand, the Ohio Supreme Court could conceivably find that under the circumstances of this case, where the agents acted in a good faith belief

that they were within their jurisdictional mandates, that the substantial social cost of allowing Mr. Droste to go free would outweigh the slight deterrent benefit.

Even if this Court finds that the applicability of the exclusionary rule is properly before it, another independent ground exists whereby the Petitioner's conviction would stand even if this Court were to find in his favor and apply the rule. The Ohio Supreme Court stated in its opinion that the mere providing to Officer Lagore of the information upon which he conducted his criminal investigation was not an exercise of the agents' police authority. (Petitioner's Appendix C, 15-16) Furthermore, under Ohio law:

> [A]n arrested person is not immune from prosecution merely because of the fact that his arrest was "unlawful" or "unauthorized."

Kettering v. Hollen, 64 Ohio St. 2d 232, 236 (1980) *citing Ohio v. Holbert,* 38 Ohio St. 2d. 113 (1974); *accord INS v. Lopez-Mendoza,* 468 U.S. 1032 (1984); *Gerstein v. Pugh,* 420 U.S. 103 (1975); *Frisbie v. Collins,* 342 U.S. 519 (1952). Under the unique

circumstances of this case wherein the agents clearly had the authority to observe the Petitioner's driving, the officer had probable cause to detain and arrest the Petitioner, and Ohio law would not immunize the Petitioner from prosecution even if the exclusionary rule were applied, a ruling from this Court as to the application of the exclusionary rule would have no practical effect on the Petitioner's case.

As such, the desire to avoid advisory opinions and the conservation of scarce federal judicial resources would prescribe denial of the writ of certiorari.

II. The questions raised below are primarily questions of state law and not of national import, furthermore, the decision is in keeping with clearly established principals of law delineated by this Court.

On May 27, 1936, the Ohio Supreme Court specifically declined to adopt the exclusionary rule as a means by which to deter police misconduct. *Ohio v. Lindway,* 131 Ohio St. 166 (1936). Subsequent to the decision handed-down by this Honorable Court in

Mapp v. Ohio, 367 U.S. 643 (1961), the Ohio Supreme Court enunciated the policy that the exclusionary rule would apply only to violations of a constitutional nature. *Ohio v. Myers,* 26 Ohio St. 2d 190, 196 (1971). That ruling is still good law in Ohio. *Kettering v. Hollen,* 64 Ohio St. 2d 232 (1980).

When the Ohio Supreme Court agreed to hear the appeal in the instant case, it was done to correct the decisions of two wayward Appellate Courts who had strayed from the firmly established precedent in this area of law. While certainly of importance to Ohio jurisprudence, the decision is lacking in national application. The Ohio Supreme Court did not undertake to determine whether the exclusionary rule applies to a violation of federal law, but rather sought to reaffirm its policy that it does not apply to a mere violation of state law. Counter to the assertions of the Petitioner, this decision was not contrary to "every reported decision from other jurisdictions."[5] (Petition, 14).

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[5] *See, e.g., United States v. Hensel,* 699 F. 2d 18 (5th Cir. 1982); *United States v. Ware,* 161 F. 3d 414 (6th Cir. 1998); *United States v. Harrington,* 681 F.2d 612 (9th Cir. 1982); *United States v. Thompson,*

The Petitioner's attempt to imbue state law with constitutional import becomes all the more imprudent when viewed in light of the diversity of legislation throughout the states. To attach constitutional significance to what has previously been state statutory constraints would be to create a nation wherein not only are the laws different from state-to-state, but the rights afforded a citizen under the U.S. Constitution vary from state-to-state. To afford the states the power to alter the meaning of the U.S. Constitution in this manner would be to invite an erosion of both the protections of the Fourth and Fourteenth Amendments and the authority of this Honorable Court.

Furthermore, the Petitioner is also incorrect when he states that the decision of the Ohio Supreme Court is "in conflict with clearly established principals of law previously decided by this Honorable Court." (Petition, 14). In fact, this Court has determined not to

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936 F.2d 1249 (11th Cir. 1991); *United States v. Long*, 803 F. Supp. 1086 (D. S.C. 1992); *Daniels v. Alabama*, 534 So. 2d 628 (1985); *Colorado v. Fournier*, 793 P.2d 1176 (1990); *Louisiana v Matthieu*, 506 So. 2d 1209 (1987); *Michigan v. Clark*, 450 N.W.2d 75 (1989); *New York v. La Fontaine*, 664 N.Y.S.2d 587 (1997); *Tharp v. Virginia*, 270 S.E.2d 752 (1980).

apply the exclusionary rule under circumstances similar to those that the Petitioner alleges to have been unconstitutional in the instant case. This Court has observed that:

> [E]vidence should be suppressed "only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."

Illinois v. Krull, 480 U.S. 340, 348-349 (1987) *citing United States v. Leon,* 468 U.S. 897 (1984) *quoting United States v. Peltier,* 422 U.S. 531, 542 (1975). Under this same rationale, this Honorable Court has declined to invoke the exclusionary rule where evidence was obtained in reasonable reliance on a search warrant later found to be unsupported by probable cause, *United States v. Leon,* 468 U.S. 897 (1984), evidence was obtained in reasonable reliance on a statute later declared unconstitutional, *Illinois v. Krull,* 480 U.S. 340 (1987), and evidence obtained in reasonable reliance on information received from a

court employee that was later found to be erroneous, *Arizona v. Evans*, 514 U.S. 1 (1995).[6]

For all the foregoing reasons, the petition should be denied.

III. Pertaining to the second "Question Presented for Review," the Court lacks jurisdiction to hear this issue.

The Petitioner invokes the jurisdiction of this Honorable Court pursuant to 28 USCS section 1257 which provides for review by the Supreme Court by writ of certiorari where "any title, right, privilege, or immunity is specially set up or claimed under the Constitution ... of ... the United States." Furthermore, when reviewing state court judgments under 28 USCS section 1257, this Court has adhered to the view that a Petitioner's claim will not be considered "unless it was either addressed by, or properly presented to, the state court that rendered the decision." *Adams v. Robertson,*

[6] This Court has given constitutional import to Arkansas's "knock-and-announce" law, however, the basis for that decision lied in the Court's finding that the common law principle upon which the statute was based is a part of the reasonableness inquiry under the Fourth Amendment. *Wilson v. Arkansas*, 514 U.S. 927 (1995).

520 U.S. 83 (1997) *citing Heath v. Alabama,* 474 U.S. 82, 87 (1985); *Illinois v Gates,* 462 U.S. 213, 217-219 (1983); *McGoldrick v. Compaignie Generale Transatlantique,* 309 U.S. 430, 434 (1940). Where the state court is silent on a federal question, the Court will assume that the issue was not properly presented. *Adams,* 520 U.S. at ___, *citing Board of Directors of Rotary Int'l v. Rotary Club of Duarte,* 481 U.S. 537 (1987). The burden of defeating this assumption lies with the Petitioner who bears the burden of demonstrating that the state court had "a fair opportunity to address the federal question that is sought to be presented." *Webb v. Webb,* 451 U.S. 493 (1981). Rule 14(1)(g)(i) of the Rules of the Supreme Court makes it incumbent upon the Petitioner to specify the stage in the proceedings when the federal question sought to be reviewed was raised.

In addition to the requirements that the Petitioner raise a federal question which previously had been properly presented to the state court, the jurisdiction of this Court is further predicated upon a showing of "standing." A Petitioner must be able to

demonstrate "personal injury fairly traceable to the [respondent's] allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v Wright,* 468 U.S. 737, 750-751 (1984) *citing Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464 (1982).

While it succeeds in straining the bounds of credulity, the Petitioner's second "Question Presented for Review," fails to state a federal claim. Nor has the Petitioner met his burden in demonstrating that the state court had a fair opportunity to address any federal question that the Petitioner attempted to raise regarding the right of a citizen to use force to resist an unlawful arrest. The State submits that the reason for the Petitioner's omissions, in contravention of Rule 14(1)(g), lies in the fact that Mr. Droste neither used force to resist his arrest nor was alleged to have done so. In fact, the Petitioner concedes this fact in his "Petition for Writ of Certiorari." (Petition, 12)

The Petitioner's failure to allege that he used force to resist his arrest calls this Court's jurisdiction

into question on another level. While the State is moved by the concern demonstrated for the safety of law enforcement officers amid the "potential blood bath" hypothesized by the Petitioner, the Petitioner is, nonetheless, without standing to pose the question. The Petitioner has failed to demonstrate personal injury (in regards to this issue) as the result of the State's allegedly unlawful conduct. In fact, the Petitioner, in arguing the point, asserts that it is the State that has been harmed.

For all of the aforementioned reasons, the Respondent submits that this Honorable Court is without jurisdiction to hear the matters presented in the second "Question Presented for Review."

CONCLUSION

For the foregoing reasons, Respondent State of Ohio requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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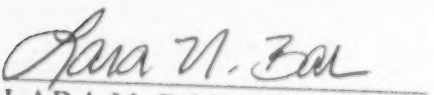

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APPENDIX

Ohio Revised Code section 5502.61 ..... A-1

Ohio Supreme Court Rules for the
Reporting of Opinions B-1

APPENDIX A

OHIO REVISED CODE

Section 5502.61 Liquor control investigators.

(A) As used in this section, "felony" has the same meaning as in section 109.511 [109.51.1] of the Revised Code.

(B)(1)(a) Any person employed by the director of public safety and designated by the director to enforce Title XLIII [43] of the Revised Code shall be known as a liquor control investigator and shall serve within the department's investigation unit. The director shall not employ a person as a liquor control investigator in the investigation unit engaged in the enforcement of Title XLIII [43] of the Revised Code on a permanent basis, on a temporary basis, for a probationary term, or on other than a permanent basis if the person previously has been convicted of or has pleaded guilty to a felony.

(2)(a) The director of public safety shall terminate the employment of a liquor control investigator in the investigation unit of the department engaged in the enforcement of Title XLIII [43] of the Revised Code if the liquor control investigator does either of the following:

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section 2929.29 of the Revised Code in which the liquor control investigator agrees to surrender the certificate awarded to that investigator under section 109.77 of the Revised Code.

(b) The director of public safety shall suspend from employment a liquor control investigator in the investigation unit of the department engaged in the enforcement of Title XLIII [43] of the Revised Code if the liquor control investigator is convicted, after trial, of a felony. If the liquor control investigator files an appeal from that conviction and the conviction is upheld by the highest court to which the appeal is taken or if the liquor control investigator does not file

a timely appeal, the director shall terminate the employment of that investigator. If the liquor control investigator files an appeal that results in that investigator's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against that investigator, the director shall reinstate that investigator. A liquor control investigator who is reinstated under division (B)(2)(b) of this section shall not receive any back pay unless that investigator's conviction of the felony was reversed on appeal, or the felony charge was dismissed, because the court found insufficient evidence to convict that investigator of the felony.

(3) Division (B) of this section does not apply regarding an offense that was committed prior to January 1, 1997.

(4) The suspension from employment, or the termination of the employment, of a liquor control investigator under division (B)(2) of this section shall be in accordance with Chapter 119, of the Revised Code.

(C)(1) A liquor control investigator, on any retail liquor permit premises or any other premises where a violation of Title XLIII[43] of the Revised Code or any rule adopted under it is occurring, has the authority vested in peace officers under section 2935.03 of the Revised Code to keep the peace and to enforce and make arrests for those violations. A liquor control investigator may also execute search warrants and seize and take into custody any property relating to any of those violations.

(2) A liquor control investigator who is on, immediately adjacent to, or across from a retail liquor permit premises and is performing investigative duties relating to that premises or who is on a tract of land that is not a liquor permit premises but where violations of Title XLIII [43] of the Revised Code allegedly are occurring, or who is in view of a suspected violation of Title XLIII [43] of the Revised Code, has the authority to enforce that title and sections 2903.12, 2903.13, 2903.14, 2907.09, 2917.44, 2921.13, 2921.31, 2921.32, 2921.33, 2923.12, 2923.121 [2923.12.1], 2925.11, 2925.13, and 4507.30

of the Revised Code if the offense is witnessed during an investigation of or the enforcement of an offense described in Title XLIII [43] of the Revised Code. Nothing in this section shall be construed to supersede or curtail local law enforcement authority.

(3) Before exercising any powers of a peace officer as defined in section 2935.01 of the Revised Code, a liquor control investigator shall comply with the certification requirements of section 109.77 of the Revised Code, take an oath of office, and receive from the governor, upon the director of public safety's recommendation, a commission indicating authority to make arrests as authorized by this section.

(D) A liquor control investigator may render assistance to a state or local law enforcement officer at that officer's request or in an emergency. A liquor control investigator who renders assistance authorized by this division to a state or local law enforcement officer shall be considered as performing services within the scope of the investigator's regular employment.

A political subdivision that receives the assistance of a liquor control investigator under this division is not subject to civil liability under Chapter 2744, of the Revised Code as a result of any action or omission of the liquor agent.

(E) To achieve the purposes for which liquor control investigators are designated under this section, the director of public safety may enter into cooperative or contractual arrangements with the United States, any department or agency of the United States, other states, state agencies and political subdivisions of this state, or any other person or body politic to affect the enforcement of liquor control laws and alcohol education.

HISTORY: 146 v S 162 (Eff 10-29-95); 146 v H 566. Eff 10-16-96.

APPENDIX B

SUPREME COURT RULES FOR THE REPORTING OF OPINIONS

Effective March 1, 1983

RULE 1. Supreme Court Opinions

(A) All opinions of the Supreme Court shall be reported in the Ohio Official Reports.

(B) The syllabus of a Supreme Court opinion states the controlling point or points of law decided in and necessarily arising from the facts of the specific case before the Court for adjudication.

(C) In a per curiam opinion of the Supreme Court, the point or points of law decided in the case are contained within the test of each per curiam opinion and are those necessarily arising from the facts of the specific case before the Court for adjudication.